(2010) 10 MAD CK 0359

In the Madras High Court

Case No : C.M.A. (MD) No. 282 of 2005

Mallika and Others APPELLANT

Vs

K.M. Thirunavukkarasu and The Oriental Insurance Co. Ltd. RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0359

Hon'ble Judges : S. Nagamuthu, J;P. Jyothimani, J

Bench : Division Bench

Advocate : Ramaratnam, for the Appellant; K. Bhaskaran, for R 2, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—This civil miscellaneous appeal has been preferred by the claimants in MCOP No. 614 of 2001 on the file of the Principal District Judge, Dindigul seeking enhancement of the compensation.

2. The Appellants are the claimants and they are dependants of the deceased Mr. Selvam @ Selvaraj. According to the claimants, the deceased was doing jewellary business along with his wife at Nilakottai. In order to prove his income, on the side of the claimants income tax returns of the first claimant have been produced in evidence as Ex.P5 and Ex.P6. Relying on the same, it is now claimed that the income tax return pertaining to the wife of the deceased should be treated as income of the deceased for the purpose of calculating the loss of income to the dependants of the deceased. It is further submitted that the deceased was doing the business in the name of his wife and therefore, income shown in the income tax return pertaining to his wife should be taken as income of the deceased, but the Tribunal has rejected the said contention. As a matter of fact, in paragraph 9 of the award the Tribunal has stated that it cannot be inferred from the above documents that the income shown in the above returns and assessment orders are that of the deceased.

3. In this appeal, it is again contended by the learned Counsel for the Appellants that the income shown in the income tax return pertaining to the deceased wife should be taken as income of the deceased. In our considered opinion the said contention cannot be accepted. There is no evidence to show that income shown in the income tax returns pertaining to his wife were that of the income of the deceased. The Tribunal has rightly taken Rs. 5,000/-as a contribution to the dependants. The Respondent is not aggrieved by the same and it is evident from the fm that no appeal has been preferred by the Respondent. Therefore, the monthly contribution of the deceased to the dependants fixed at Rs. 5,000/- stands confirmed.

4. Further the learned Counsel for the Appellants would submit that the Tribunal has taken the multiplier as 13, which according to the decision rendered in Smt. Sarala Verma v. Delhi Transport Corporation and Anr. reported in 2009 (2) TNMAC 1 is not correct.

5. Admittedly, the deceased was aged 45 years at the time of the accident. As per the Sarala Verma''s case (cited supra) the proper multiplier should be 14. If 14 multiplier is applied, the loss of income to the family members is worked out to Rs. 8,40,000/-(60,000 X 14 = 8,40,000). Apart from that a sum of Rs. 20,000/-awarded towards loss of consortium also needs to be confirmed. The Tribunal has awarded Rs. 15,000/-towards loss of love and affection in respect of other Petitioners and Rs. 5,000/-towards funeral expenses are also need to be confirmed. Thus, in to, Rs. 8,80,000/-(Rupees eight lakhs eighty thousand only) is awarded as compensation, for which the claimants are entitled to. To that extent, the award of Tribunal needs to be modified.

6. In the result, the appeal stands partly allowed in the following terms;

i) There shall be an award to an extent of Rs. 8,80,000/-instead of Rs. 8,20,000/

ii) In so far as the interest is concerned, the Respondents shall pay interest at the rate of 9% for the amount awarded by the Tribunal and 7.5% for the amount enhanced by this Court.

In all other respect, the appeal stands dismissed.